

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

CIVIL ACTION FILE NO.: 4:12-cv-00154-D

NORTH CAROLINA)
ENVIRONMENTAL JUSTICE)
NETWORK, NEUSE RIVERKEEPER)
FOUNDATION, INC., and)
WATERKEEPER ALLIANCE, INC.,)
Plaintiffs)
v.)
MR. DONALD TAYLOR and MS.)
ANNIE TAYLOR, individually and)
d/b/a TAYLOR FINISHING, MR.)
JUSTIN T. MCLAWHORN, and MR.)
AARON MCLAWHORN,)
Defendants)

**DEFENDANT ANNIE TAYLOR'S
MOTION TO DISMISS
PLAINTIFFS' AMENDED COMPLAINT**
F.R.C.P. 12(b)(1)

Defendant Annie Taylor ("Annie Taylor"), by and through her undersigned attorneys, hereby moves the Court to dismiss Plaintiffs' Amended Complaint against her pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the grounds that this Court lacks subject-matter jurisdiction.

In support of this Motion, Annie Taylor states:

1. Plaintiffs have sued Annie Taylor under the citizen suit provisions of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972. In Count One of Plaintiffs' Amended Complaint ("Complaint"), Plaintiffs allege violations of the CWA by Annie Taylor, and in Counts Two and Three of the Amended Complaint, Plaintiffs allege violations of RCRA by Annie Taylor.

2. Any party bringing an action under the citizen suit provisions of the CWA or RCRA is required by law to give proper written notice of the suit to the alleged violator in advance of filing. 33 U.S.C. § 1365(b), 42 U.S.C. § 6972(b). Such notice is a mandatory prerequisite to maintaining a suit under either the CWA or RCRA.

3. All counts in the Amended Complaint should be dismissed as to Annie Taylor under Rule 12(b)(1), because Plaintiffs failed to serve any notice of intent to sue on Annie Taylor prior to filing the Amended Complaint, as required by the operative federal statutes and regulations.

WHEREFORE, Annie Taylor respectfully requests that the Court enter an Order dismissing Plaintiffs' Amended Complaint without prejudice as to Annie Taylor, and directing such other and further relief as the Court deems just and proper.

This the 9th day of November, 2012.

/s/ Donalt J. Eglinton

Donalt J. Eglinton

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2012, I electronically filed DEFENDANT ANNIE TAYLOR'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Plaintiffs North Carolina Environmental Justice Network; Neuse Riverkeeper Foundation, Inc.; and Waterkeeper Alliance, Inc., c/o their attorneys of record, Stanley B. Green, Esq.; Chinelo E. Dike-Minor, Esq.; Kelly H. Foster, Esq.; Michael T. Lee, Esq.; Bethany A. Davis Noll, Esq.; Lee Knight Caffery, Esq., and Defendants Mr. Frederick A. McLawhorn, Mr. Justin T. McLawhorn, and Mr. Aaron McLawhorn, c/o their attorneys of record, John R. King, Esq. and Lars P. Simonsen, Esq.

/s/ Donalt J. Eglinton

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